



Virginia Workers' Compensation Commission

EDUCATIONAL CONFERENCE

& EXHIBITION

OCTOBER 28-29, 2019

Located at the Greater Richmond Convention Center

October 28 - 29, 2019

Hot Topics and Best Practices for Adjusters

Deputy Commissioner Jason Cording
Staff Attorney Trish Sherron



Virginia Workers' Compensation Commission
EDUCATIONAL CONFERENCE
& **EXHIBITION**
OCTOBER 28-29, 2019

Another claim just dropped on your desk. What's next?

**Is it an original Claim for Benefits (OCFB) or claim alleging a Change in Condition (CIC)?
Why does this matter?**

The Commission processes them differently.

OCFB: 20-Day Orders and Order Response Form Claim Filed

CIC: Most are reviewed and referred to the Commission's ADR Department for an informal telephone conference. Those not suitable for alternative dispute resolution are referred to the docket.

What to expect from a OCFB?

20-Day Order Claim Filed sent to the employer/insurer.

20-Day Order Claim Filed

Date of this notice: October 28, 2019

JACK N. JILL v. UP THE HILL, INC
FETCH A PAIL , Insurance Carrier
BROKEN CROWN CLAIMS MANAGEMENT INC , Claim Administrator
Jurisdiction Claim No. VA00000001777
Claim Administrator File No. WS1595
Date of Injury June 09, 2019

To Insurer:

On October 11, 2019, the Claimant filed a claim for benefits with regard to this injury. The Insurer must respond to the pending claim seeking temporary partial wage loss benefits beginning September 1, 2019 and continuing.

The Insurer is ORDERED to complete and return the attached Order Response Form to the Virginia Workers' Compensation Commission at the address listed above within 20 days.>

Notifies Employer
and Insurer of the
date a claim was
filed and nature of
claim

What to expect from a OCFB? (Cont.)

Order Response Form Claim Filed

The Commission is asking the employer/insurer for their position on the pending claim.

Your response determines what happens next.

What to expect from a OCFB? (Cont.)

Order Response Form Claim Filed

Date of this notice: October 28, 2019

JACK N. JILL v. UP THE HILL, INC

FETCH A PAIL , Insurance Carrier

BROKEN CROWN CLAIMS MANAGEMENT INC , Claim Administrator

Jurisdiction Claim No. VA00000001777

Claim Administrator File No. WS1595

Date of Injury June 09, 2019

To Claims Administrator:

This form must be completed, signed and returned to the Commission within 20 days from the date of this letter.
Please make this form the cover page when responding to the 20-day Order.

Claim is accepted as compensable:

☐

Agreement forms signed by all parties are attached hereto.

☐

Agreement forms were/will be mailed to the Injured Worker or his/her Attorney on _____.

☐

Agree to causally related medical award only.

Agree to compensability and sent/
sending forms, no further action taken
by Commission pending submission of
agreement forms.

What to expect from a OCFB? (Cont.)

Order Response Form Claim Filed

Date of this notice: October 28, 2019

JACK N. JILL v. UP THE HILL, INC

FETCH A PAIL , Insurance Carrier

BROKEN CROWN CLAIMS MANAGEMENT INC , Claim Administrator

Jurisdiction Claim No. VA000000001777

Claim Administrator File No. WS1595

Date of Injury June 09, 2019

To Claims Administrator:

This form must be completed, signed and returned to the Commission.
Please make this form the cover page when responding to the 20-day Order.

Claim is accepted as compensable:

- ☐ Agreement forms signed by all parties are attached hereto.
- ☐ Agreement forms were/will be mailed to the Injured Worker or his/her Attorney on _____.
- ☐ Agree to causally related medical award only.

Claim is being investigated:

- ☐ Reason: _____

Agree to Medical Award--is that the only issue presented?

If so, the Commission will enter an award for "All Causally Related Body Parts" and no further action will be taken.

**Order Response Form
Claim Filed**

Date of this notice: October 28, 2019

JACK N. JILL v. UP THE HILL, INC
FETCH A PAIL , Insurance Carrier
BROKEN CROWN CLAIMS MANAGEMENT INC
Jurisdiction Claim No. VA00000001777
Claim Administrator File No. WS1595
Date of Injury June 09, 2019

To Claims Administrator:

This form must be completed, signed and returned to the Commission within 20 days from the date of this letter.
Please make this form the cover page when responding to the 20-day Order.

Claim is accepted as compensable:

- ☐ Agreement forms signed by all parties are attached hereto.
- ☐ Agreement forms were/will be mailed to the Injured Worker or his/her Attorney on _____.
- ☒ Agree to causally related medical award only.

Claim is being investigated:

- ☐ Reason: _____

What if you agree to Medical Award, but there are other issues in dispute?

The Commission will likely enter an award for "All Causally Related Body Parts" and the remaining dispute (TTD, TPD, PPD) will be referred for hearing.

What to expect from a OCFB? (Cont.)

Order Response Form Claim Filed

Date of this notice: October 28, 2019

JACK N. JILL v. UP THE HILL, INC
FETCH A PAIL , Insurance Carrier
BROKEN CROWN CLAIMS MANAGEMENT INC , Claim Administrator
Jurisdiction Claim No. VA00000001777
Claim Administrator File No. WS1595
Date of Injury June 09, 2019

To Claims Administrator:

This form must be completed, signed and returned to the Commission within 20 days from the date of this letter.
Please make this form the cover page when responding to the 20-day Order.

Claim is accepted as compensable:

- ☐ Agreement forms signed by all parties are attached hereto.
- ☐ Agreement forms were/will be mailed to the Injured Worker or his/her Attorney on _____.
- ☐ Agree to causally related medical award only.

Claim is being investigated:

☐ Reason: _____

Claim is denied:

☐ Agreement forms will NOT be mailed to the Injured Worker/Injured Workers' Attorney. This claim will be docketed for a hearing. In accordance with Rule 4.2, you must file all medical records in your possession relating to this claim.

Reason: _____

Investigating claim or denying claim.
What happens next? Referred for
an evidentiary hearing!!!

What to expect in a claim alleging a CIC?

If not referred directly to the docket, you will receive a Notice of Referral of Application to ADR—Change in Condition.

Typical issues referred for issue mediation include disputes concerning medical treatment, medical bills, mileage, return to work, temporary partial disability rates, and cost-of-living adjustments.

What to expect in a claim alleging a CIC? (cont.)



COMMONWEALTH OF VIRGINIA
VIRGINIA WORKERS' COMPENSATION COMMISSION
333 E FRANKLIN ST, RICHMOND, VA 23219
1-877-664-2566
www.workcomp.virginia.gov

Notice of Referral of Application to ADR - Change in Condition

Date of this notice: July 25, 2019

Informs parties of the
claim referred to ADR

JACK N. JILL v. UP THE HILL, INC.
FETCH A PAIL, Insurance Carrier
BROKEN CROWN CLAIMS MANAGEMENT INC, Claim Admin
Claim No. VA00000001777
ADR Dispute ID VA00000001777-ADR-01
Claim Administrator File No. WS1595
Date of Injury June 09, 2019

Informs the parties that an informal telephone
conference will be scheduled. Attached to the
Notice is a Change in Condition Claim Response

To All Interested Parties:

The Virginia Workers' Compensation Commission is referring the following items for
ADR:

- Request For Hearing filed October 11, 2019

All parties will be notified of informal telephone conference(s) which will occur 30 - 45 days from the date of this notice. The purpose of the informal telephone conference is to determine which issues may be resolved without a judicial proceeding. Any issues unresolved at the informal telephone conference may be referred to an on the record or evidentiary hearing docket immediately.

Parties may arrange the telephone conference earlier by calling the ADR Department at (804) 205-3139 or emailing adr@workcomp.virginia.gov.

If the defendants file a Response to the Change In Condition Claim prior to the conference, the informal telephone conference may not be necessary. A form for this purpose may be found on the Commission's website at <http://www.Workcomp.virginia.gov/sites/default/files/forms/Change-In-Condition-Claims-Response-Form.pdf>

In addition to the informal telephone conference, parties may request Issue Mediation either in person or by telephone. Issue mediation

What to expect in a claim alleging a CIC? (cont.)

The purpose of the conference: to see if some or all of the issues can be resolved without going to a hearing. Any issues unresolved following the informal telephone conference may be referred IMMEDIATELY for an on-the-record (OTR) or evidentiary hearing.

a. Denial Reason: _____

What to expect in a claim alleging a CIC? (cont.)

i. _____

1. Payment was made on (date): _____
2. Agreement forms were forwarded to: _____ on (date): _____
3. Counsel will be submitting a Stipulated Order: _____
4. Other: _____

ii. _____

1. Payment was made on (date): _____
2. Agreement forms were forwarded to: _____ on (date): _____
3. Counsel will be submitting a Stipulated Order: ☐
4. Other: _____

b. The denied portions of the claim are:

- i. _____
- ii. _____

3. The claim is denied. ☐

a. Denial Reason: _____

b. This party: does ☐ does not ☐ consent to Issue Mediation.

If denied, perhaps most importantly, it lets everyone know WHY!

Also allows employer/insurer to let Commission know if they consent to mediation.

What to expect in a claim alleging a CIC? (cont.)

If the claim is accepted, then there is no need for the informal telephone conference.

If not accepted, the informal telephone conference will be scheduled to discuss the disputed issues.

Who should participate?

What is the process?

What happens next?

Next up a hearing—Evidentiary or OTR?

What claims are scheduled for an evidentiary hearing?

All original claims

CIC claims involving factual disputes requiring testimony and more complex disputes or evidentiary issues, such as change in treating physician, marketing, etc.

Next up a hearing—Evidentiary or OTR? (cont.)

What claims are referred for an on-the-record hearing?

Issues commonly addressed through OTR are similar to those referred to ADR issue mediation--medical treatment, medical bills, mileage, return to work, temporary partial disability rates, and cost-of-living adjustments.

Next up a hearing—Evidentiary or OTR? (cont.)

Evidentiary v. OTR hearing

An evidentiary hearing is what we think of as a traditional trial proceeding. The parties appear in person before a Deputy Commissioner and present testimony and other evidence. The Deputy Commissioner considers that information and issues a written opinion.

A OTR is a “paper hearing.” Rather than appearing in person, the parties submit position statements containing their evidence. A Deputy Commissioner reviews the position statements and issues a written opinion.

Adjuster's Role at the Hearing

What does a hearing mean to the adjuster?

Can you appear at an evidentiary hearing to advocate for the insurer and employer by offering evidence, argument and examining witnesses?

Can I file a position statement for an OTR hearing?

Adjuster's Role at the Hearing (cont.)

ANSWER

Can you appear at an evidentiary hearing to advocate for the insurer and employer by offering evidence, argument and examining witnesses?

NO

Can I file a position statement for an OTR hearing?

NO

Unauthorized Practice of the Law

Why?

It's considered unauthorized practice of the law, and it is against a crime!!!

Unauthorized Practice of the Law (cont.)

Va. Code § 54.1-3904:

Provides that any person who practice law without being authorized or licensed shall be guilty of a Class 1 misdemeanor.

Punishable by up to one year in jail and/or a \$2,500 fine!!!

Unauthorized Practice of the Law (cont.)

UPL is also covered by Rule 1, Part 6, Section 1 of the Rules of the Supreme Court of Virginia, which provide that a nonlawyer cannot represent the interests of another before a Virginia Tribunal, which includes the Workers' Compensation Commission.

Unauthorized Practice of the Law (cont.)

You are prohibited from appearing in person to represent the interests of the employer and carrier. You also cannot submit written pleadings, arguments, or conduct discovery on their behalf.

What can I do that is not considered UPL?

Regardless of the hearing type, you can certainly investigate the claim and gather information, i.e., interview employer and other witnesses, obtain medical documentation, etc.

But what can you do with the information?

What can I do that is not considered UPL? (cont.)

You can share the information with your counsel and, if appropriate, they can file it with the Commission.

You can (and in fact are required to) file relevant medical records with the Commission.
(See Commission Rule 4.2)

You can respond to Order Response Forms for OCFBs and CIC claims.

You can file an Application for Hearing on behalf of the employer/insurer.

Exchanging and filing medical records

Commission Rule 4.2 Requires (in part):

Each party to promptly provide the other parties with copies of any medical records they receive as they receive them.

Unless otherwise directed by the Commission or these Rules, the parties shall not file medical records with the Commission until a hearing request is filed. The requesting party shall promptly file medical records supporting the request, if applicable. After a hearing request has been filed, the parties shall file with the Commission only medical records that are related to the hearing request.... A party is not required to file copies of medical records that another party has already filed.

Exchanging and filing medical records (cont.)

Order of the Commission Clarifying Commission Rules 2.2(B)(3) and 4.2 (in part):

Effective July 1, 2013, it is hereby Ordered:

1. Without leave of the Commission, the parties shall not file with the Commission ... any of the following medical records, unless the specific record is accompanied by a written statement explaining its relevance and materiality, which statement may be provided at the hearing:
 - a. laboratory reports
 - b. routine nursing notes
 - c. x-rays or other diagnostic imagery films (pulmonary cases excepted)
 - d. physical therapy records
 - e. routine hospital patient observation notes
 - f. health provider bills and/or statements of account (unless the claim is one brought by a health provider or seeks payment of specific medical expenses)

EMPLOYER'S APPLICATIONS FOR HEARING

HOW TO AVOID REJECTION





Technical Review



Probable Cause Review

Technical Review

Commission's Claims Services Department screens each application for compliance with Rule 1.4.

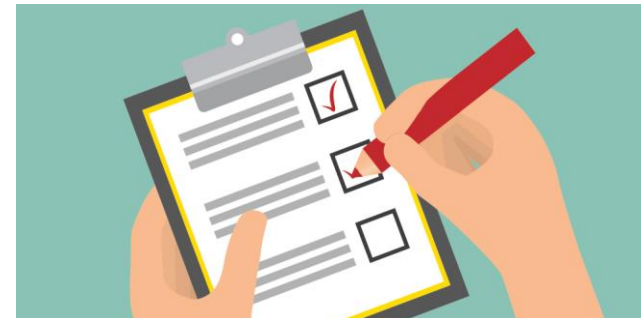
Technical deficiency results in rejection and an order directing resumption of benefits pursuant to the outstanding award.

If technically acceptable, the application will be forwarded for probable cause review.



Technical Reviewer's Checklist

1. Claimant's address of record
2. Grounds for application
3. Relief requested
4. Compensation rate
5. Paid through date - Rule 1.4(C)
6. Copy to claimant/attorney
7. Documentation attached to application in support of its allegations
8. Signed and dated



Virginia Workers' Compensation Commission
333 E. Franklin St., Richmond, Virginia 23219

Employer's Application for Hearing
SEE SPECIAL INSTRUCTIONS ON THE REVERSE SIDE

Employee _____ JCN _____
Address _____ Date of Accident _____
City/State/Zip _____

The Commission is requested to suspend benefits for the following reason(s) [attach supporting documentation]:

- _____ The employee returned to pre-injury work on _____.
- _____ The employee was released to return to pre-injury work on _____ per Dr. _____
_____ 's report dated _____.
- _____ The employee returned to light-duty work on _____ at an average weekly wage of
\$ _____.
- _____ The employee's current disability is unrelated to the industrial accident noted in
Dr. _____ 's report(s) dated _____.
- _____ The employee failed to report to an employer-requested medical examination with
Dr. _____ on _____.
- _____ The employee refused selective employment within the employee's physical capacity at
_____ on _____.
- _____ The employee failed to cooperate with vocational rehabilitation efforts (documentation must be
attached).
- _____ The employee has refused medical treatment offered by Dr. _____ as noted
in the medical report dated _____.
- _____ Other _____

Request: _____ Termination/suspension of the outstanding award
_____ Change of an outstanding award for temporary total to temporary partial
_____ Credit
_____ Other _____

Compensation was paid through _____ at the rate of \$ _____ per week.

I hereby certify under penalty of perjury that the facts in this application are true and correct to the best of my knowledge and that a copy of this application, INCLUDING INSTRUCTIONS ON THE REVERSE SIDE, and all attached supporting documents were sent to the employee at the above address, and to the employee's attorney (if known) at _____ and to the Virginia Workers' Compensation Commission on _____ (date).

APPLICANT'S NAME AND TITLE: _____ EMPLOYER/CARRIER _____

SIGNATURE OF APPLICANT: _____ DATE: _____

Registered WebFile Users: type in your signature if submitting through your WebFile account.

Notice to the employee: If the Virginia Workers' Compensation Commission approves this application, your compensation benefits will be suspended. Please refer to the additional instructions on the back of this form.

Technical Reviewer's Checklist

1

Virginia Workers' Compensation Commission
333 E. Franklin St., Richmond, Virginia 23219

Employer's Application for Hearing
SEE SPECIAL INSTRUCTIONS ON THE REVERSE SIDE

Claimant's
Address

Employee
Address
City/State/Zip

JCN
Date of Accident

2

Grounds of
Application

The Commission is requested to suspend benefits for the following reason(s) [attach supporting documentation]:

☐ The employee returned to pre-injury work on .

☐ The employee was released to return to pre-injury work on 's report dated .

☐ The employee returned to light-duty work on at an average weekly wage of \$.

☐ The employee's current disability is unrelated to the industrial accident noted in Dr. 's report(s) dated .

☐ The employee failed to report to an employer-requested medical examination with Dr. on .

☐ The employee refused selective employment within the employee's physical capacity at on .

☐ The employee failed to cooperate with vocational rehabilitation efforts (documentation must be attached).

☐ The employee has refused medical treatment offered by Dr. as noted in the medical report dated .

☐ Other

7

Documentation attached to application in support of its allegation(s).

Technical Reviewer's Checklist

3

Relief Requested

5

Paid through Date
Rule 1.4(C)

6

Certify a copy
has been sent
to claimant
and attorney
and the date
sent

Request: Termination/suspension of the outstanding award
 Change of an outstanding award for temporary total to temporary partial
 Credit
 Other

Compensation was paid through at the rate of \$ per week.

I hereby certify under penalty of perjury that the statements in this application are true and correct to the best of my knowledge and that a copy of this application, INCLUDING INSTRUCTIONS ON THE REVERSE SIDE, and all attached supporting documents were sent to the employee at the above address, and to the employee's attorney (if known) at , and to the Virginia Workers' Compensation Commission on (date).

APPLICANT'S NAME AND TITLE: EMPLOYER/CARRIER

SIGNATURE OF APPLICANT: DATE:

Registered WebFile Users: type in your signature if submitting through your WebFile account.

Notice to the employee: If the Virginia Workers' Compensation Commission approves this application, your compensation benefits will be suspended. Please refer to the additional instructions on the back of this form.

4

Compensation
Rate

8

Sign and Date

Employer's Application for Hearing
IWC Form No. 5A (rev. 4/01/09)

Other Issues in Technical Review

- Rule 1.4(F) –A change in condition application may be accepted and docketed when payment of compensation continues.
If the carrier continues to pay at the awarded rate while the application is pending, there is no probable cause review.

The application is often sent to ADR.
- Application must be filed within two years from the date compensation was last paid under an award. Rule 1.4(E) and §65.2-708.
- Successive applications – Rule 1.4(C)(4) allows employer to pay through date required of first application, but if the first application is rejected (and any appeal is unsuccessful) employer must make payments current through the date required by the allegations of the successive application
- Questions? Christina Ramos, technical reviewer, 804-774-4158

Probable Cause Review

Rule 1.5(C) - If the application is found technically acceptable, the claimant is permitted 15 days from the date the application is filed to present evidence in opposition to the application.

At the conclusion of the 15 day period, a Commission staff attorney reviews the evidence in the file and makes a determination of whether there is probable cause to suspend benefits pending a hearing.

Probable Cause Standard

Probable cause exists “where the facts and circumstances are sufficient to justify a reasonable person to believe that the allegations, if true, would prevail.”

The information submitted with the application must show the likelihood of success on the merits of the allegations contained in the application.



In making this determination, the examiner may review and weigh the evidence in the record filed by either party.

Staff Attorney Probable Cause Review

REJECTED

Evidence is insufficient to establish probable cause to suspend benefits and docket the application –

Rejection letter is issued directing employer/carrier to reinstate benefits as of date of suspension



ACCEPTED

Evidence meets probable cause standard

1. Evidentiary docket
2. On-the-record docket
3. ADR



HOT TOPICS

QUESTIONS???